

Q& A REGARDING THE OPEN PUBLIC MEETINGS ACT

1. Does the Open Public Meetings Act apply to Boards and Commissions?

Yes. The OPMA provides: “*Meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.*” RCW 42.30.030. The [State Agency] is a state agency and is included in the definition of “public agency”.

2. What interaction among members of a governing body are “meetings” under the OPMA?

The OPMA declares that a meeting occurs whenever there is action, including the discussion, deliberation or evaluation that may lead to a final decision. This means that the requirements of the OPMA are triggered *whether or not* a final official vote is scheduled to be taken or is actually taken.¹

A meeting occurs if a quorum of the members of the governing body were to discuss or consider a matter within its authority—for instance, the budget, personnel, or land use issues—regardless of where that discussion or consideration might occur and regardless of whether that discussion or consideration leads to a final action. Although a member’s individual review of material in preparation for a meeting is not “action,”² the OPMA does not allow for a quorum of members to get together for “study sessions”, “retreats”, or similar efforts to discuss agency issues without the required notice and without making the meeting public. Notice must be given just as if a formally scheduled meeting was to be held.

3. Must final actions be taken in public?

Yes. “Final action” refers to the final vote by the governing body or “committee thereof” on the matter, even where other actions (such as deliberation) can be taken during an executive session. In 1989, the legislature amended the OPMA to require that final action be taken in an open public meeting. *See*, RCW 42.30.110(1)(g).

4. Could exchanges of email or a series of small group meetings constitute a “meeting” triggering the OPMA?

In *Wood v. Battle Ground School District*³, the Washington Court of Appeals ruled that, the legislature intended a broad definition of “meeting” and that an exchange of emails could constitute a meeting if (1) a quorum of members participate in the email exchange, (2) the participants collectively intend to transact official business, and (3) members communicate about issues that may or will come before the body for a vote. This does not mean that the

¹ *Protect the Peninsula's Future v. Clallam County*, 66 Wn. App. 671, 833 P.2d 406 (1992), *review denied*, 121 Wn.2d 1011 (1993).

² *Equitable Shipyards, Inc. v. State of Wash.*, 93 Wn.2d 465, 611 P.2d 396 (1980).

³ 27 P.3d 1208 (Wn. App. 2001)

OPMA is violated whenever members receive information about upcoming issues or communicate amongst themselves. However, when a quorum of the Board actively exchanges emails with the intent to deliberate and collectively discuss business, it may serve the same function as a meeting. In short, the lack of contemporaneous physical presence of the Council Members doesn't mean there is no meeting for OPMA purposes

4. Who may attend public meetings?

The OPMA provides that any member of the public may attend the meetings of the governing body of a public agency. This, of course, includes members of the media. The agency may not require people to sign in, complete questionnaires or establish other conditions to attendance.

5. Does permission to attend a public meeting mean that attendees are allowed to participate?

No, the OPMA does not require the governing body to allow public participation. In addition, if participation is allowed, the time for each speaker can be limited.

6. Does permission to attend a public meeting mean that attendees be allowed to record the meeting?

Although the OPMA does not specifically address whether the public may record (audio/video) a meeting, there is general agreement that recording is permitted so long as it does not interfere with the orderly conduct of the meeting.

7. Must minutes of a public meeting be maintained?

Under RCW 42.32.010, agencies must maintain minutes of their meetings and make them available upon request. The law does not specify the format or content of the required minutes. In order to satisfy the need to memorialize certain actions such as the adoption of a budget, the minutes should, at a minimum, recite the significant actions of the agency.

*Note that an executive session is not a public meeting and, therefore, minutes are not required.

8. What meetings of a governing board are not public meetings under the OPMA?

EXEMPTIONS:

The OPMA provides that certain activities that would otherwise constitute a meeting under the OPMA, are exempt from the requirements of the Act. When an agency engages in those activities, it is not required to comply with the OPMA, although other public notice requirements may apply.⁴ The governing body can conduct these activities without triggering any of the requirements of the OPMA (i.e. notice, meeting, public meeting, location, minutes).

⁴ *Responsible Urban Growth Group v. City of Kent*, 123 Wn.2d 376, 868 P.2d 861 (1994).